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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,852	12/14/2000	Axel Schamal	225/49355	5694

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EXAMINER	
REIS, TRAVIS M	

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/674,852	SCHAMAL, AXEL
	Examiner	Art Unit
	Travis M. Reis	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 February 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6 and 8-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6 and 8-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3, 4, & 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (U.S. Patent 4907929) in view of Morse (U.S. Patent 2962317).

Johnston discloses a device comprising a spike (16) for fitting into a hole, wherein Webster's Dictionary defines "a spike" as " a heavy nail", and an attachment element (20) which is releasably connectable to the spike and, with the spike fitted into the hole, rests on the component surface (12) surrounding the hole (Figures 2-4); wherein the attachment element has an essentially hemispherical shell made of a non-magnetic material (col. 4 lines 20-22) and an insert (18) arranged within the shell and releasably connectable to the spike by a screw thread (19) on the upper part of said spike which passes through the insert and screws into the shell (Figure 4); wherein a lower edge of the shell bears substantially flush against a lower side of the insert (Figure 4).

Johnston does not disclose the insert is made of magnetic material.

Morse discloses a magnetic nut (10) which is permanently magnetized (col. 1 lines 43-44) to hold against metal surfaces (15) (Figure 5). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to replace the insert disclosed with Johnston with the magnetic nut disclosed by Morse in order to solidly secure the device against component surfaces that are made of metal, such as those taught by Morse.

With respect to the preamble of the claims 1, 3, 4 and 6: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. ***Kropa v. Robie***, 88 USPQ 478 (CCPA 1951).

3. Claims 5, 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson & Morse as applied to claims 1, 3, 4, & 6 above, and further in view of Holmes (U.S. Patent 4220187).

Johnson & Morse disclose all of the instant claimed invention as stated above in the rejection of claims 1, 3, 4, & 6, but do not disclose expressly a spike fastened to the attachment element in an asymmetrical manner with respect thereto.

Holmes discloses a self-locking fastener with an attachment element/nut (12) to which the bolt (10) fastens to in an asymmetrical manner with respect thereto (Figures 1-3, 5, & 7). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the inset/nut taught by Johnson & Morse an asymmetric insert/nut disclosed by Holmes in order that the inset/nut could be locked in place and immovable.

Response to Arguments

4. In response to applicant's arguments that element 16 cannot be properly characterized as a "spike"; these arguments have been fully considered but they are not persuasive since it is a think nail driven into the ground, which fits the definition of a spike.

5. In response to applicant's arguments that cover 20 is mischaracterized as being " an attachment element" which is "releasably connectable" due to the manner disclosed by Johnston in column 4, lines 48-53; these arguments have been fully considered but they are not persuasive since this manner is applied only to certain embodiments of the invention and does

not apply to the whole scope of the invention disclosed.

6. In response to applicant's arguments that the reason for combining Johnston & Morse makes no sense; these arguments have been fully considered but they are not persuasive since Morse teaches an environment (i.e. metal surfaces) that the Johnston invention (i.e. a fitting spike) may be employed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Inquiries concerning this, or earlier, communications from the examiner should be directed to Travis M. Reis (571) 272-2249; 8--5 M--F. If unreachable, the examiner's supervisor, contact Diego Gutierrez (571) 272-2245. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis
Examiner
Art Unit 2859

Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

tmr
April 12, 2005

CHRISTOPHER W. FULTON
PRIMARY EXAMINER